SINGAPORE REPORTS

KIM TAW ELECTRIC SAWMILL CO. (PTE.) LTD. v. ANN EE SIONG

[C.A. (Wee Chong Jin C.J., D'Cotta & Rajah JJ.) March 24, 1980]

[Singapore — Civil Appeal No. 85 of 1979]

Tort — Negligence — Duty to provide safe system of work — Lorry parked lop-sided — Logs rolling off lorry injuring plaintiff — Res ipsa loquitur — Appeal — Both parties found equally liable.

Employment — Employers' duty to provide safe system of work — Injury caused by logs rolling off parked lorry — Res ipsa loquitur — Appeal.

CIVIL APPEAL.

Joe Chellam for the appellant.

Chiam See Tong for the respondent.

This was an appeal against the decision of the High Court (see [1980] 1 M.L.J. 6). At the conclusion of the appeal, Wee Chong Jin C.J. delivering the oral judgment of the court reversed the findings of fact of the trial court as to how the logs rolled off the lorry. The Court of Appeal accepted the defendant's version as to why the logs rolled off the lorry, that it was the plaintiff who knocked off the last wedge in the lorry, causing the logs to roll off.

Their Lordships also found that the system of work adopted by the defendant/appellant company was not safe, since it involved the human agency to knock off the wedges. It was the view of their Lordships that since persons were required to knock off the wedges, an accident may happen if the persons involved in knocking off the wedges were careless or negligent. In the premise, their Lordships found both the respondent and the appellant equally to blame for the accident and consequently, damages for the respondent were reduced by half and the respondent was ordered to pay the costs of the appeal to the appellant.

Order accordingly.

Solicitors: *Joe Chellam; Chiam & Co.*

HARRY LEE WEE v. PUBLIC PROSECUTOR

[A.Cr.J. (Choor Singh J.) March 12, 1980]

[Singapore — Magistrate's Appeal No. 161 of 1978]

Criminal Law and Procedure — Charge of accepting restitution of property in consideration of concealing an offence — Solicitor accepting restitution to conceal offence by assistant — Sentence — Power of District Court — Criminal Procedure Code (Cap. 113), s. 17 — Penal Code, ss. 71 and 213 — Federal Constitution, art. 7(1).

Legal Profession — Solicitor — Accepting restitution of property in consideration of concealing an offence by assistant — Delay in reporting offence — Penal Code, s. 213.

Penal Code, s. 213 — Solicitor accepting restitution of property in consideration of concealing of offence by assistant.

Evidence — Evidence of accomplice — Subsequent conduct of accomplice.

Constitutional Law — Punishment greater than prescribed at time of commission of offence — Power of court to try offence — Federal Constitution, art. 7(1).

In this case the appellant was charged under section 213 of the Penal Code with eight charges of obtaining restitution in consideration of the concealment of the offence of criminal breach of trust committed by his assistant; and one charge of attempting to obtain such restitution. He was convicted in the District Court and fines totalling $30,000 were imposed on him. The appellant appealed.

Held: (1) section 213 of the Penal Code does not require the actual concealment of an offence or the screening of any person from legal punishment or the actual forbearing of taking any proceedings. It is sufficient if an illegal gratification is received in consideration of a promise to conceal an offence or screen any person from legal punishment or desist from taking any proceedings;

(2) in this case the evidence showed that the restitution referred to in the first eight charges was accepted in consideration of concealing the offences of the assistant and the appellant was therefore rightly convicted on these charges;

(3) in regard to the ninth charge on the evidence there was no question of concealing the offence and the conviction on this charge must therefore be set aside;

(4) by virtue of the amendments to section 17 of the Criminal Procedure Code, a District Court can impose on a person convicted at one trial of any two or more distinct offences fines totalling more than $10,000;

(5) in this case the learned District Judge had not given sufficient consideration to the matters favourable to the appellant and in the circumstances, the fines should be reduced to $1,500 on each charge.

Cases referred to:-

(1) *Hem Chandra Mukherjee & Anor.* v. *Emperor* A.I.R. 1925 Cal. 85.

(2) *Biharilal Kalacharan* v. *Emperor* A.I.R. 1949 Bom. 405.

(3) *Reg.* v. *Kilbourne* [1973] A.C. 729, 746.

MAGISTRATE'S APPEAL.

J.B.R. Hazan Q.C. (*M. Rubin* with him) for the appellant.

E.C. Foenander (*Sowarun Singh* with him) (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Choor Singh J.: The first question to be decided in this case is, what is the plain meaning of section 213 of the Penal Code which reads as follows: —

"213. Whoever accepts, or agrees to accept, or attempts to obtain any gratification for himself or any other person, or any restitution of property to himself or any other person, in consideration of his concealing an offence, or of his screening any person from legal punishment for any offence, or of his not proceeding against any person for the purpose of bringing him to legal punishment, shall, if the offence is punishable with death, be punished with imprisonment for a term which may extend to seven years, and shall also be liable to fine; and if the offence is punishable with imprisonment for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment for a term which may extend to three years, and shall also be liable to fine; and if the offence is punishable with imprisonment not extending to ten years, shall be punished with imprisonment for a term which may extend to one-fourth part of the longest term of imprisonment provided for the offence, or with fine, or with both."

There is no reported decision in Singapore or Malaysia but there are two cases reported in India in which this section was considered. The first case is that of *Hem Chandra Mukherjee & Anor.* v. *Emperor.*[1] This is a decision of the Calcutta High Court in which a Divisional Bench of that court (Newbould and Mukerji, JJ.) came to the conclusion that there must be an actual concealment of an offence, or screening of